

 NORFOLK Department of Police	Operational General Order – OPR 460: Foreign Nationals		
	Office of Preparation: Strategic Management Division (mar)		
	CALEA:	1.1.4, 1.2.5, 61.1.3	
	VLEPSC:	ADM.02.04	
LEGAL REVIEW DATE:	5-11-2015	PRESCRIBED DATE:	5-22-15
City Attorney:	Jack E. Cloud	City Manager/Director of Public Safety:	Manuel D. [Signature]
APPROVED BY THE AUTHORITY OF THE CHIEF OF POLICE:		[Signature]	

Purpose:

The purpose of this order is to provide personnel with the procedures for handling foreign nationals.

Policy:

The rights of foreign nationals are part of United States and international law and shall be protected. Therefore, officers shall follow the guidelines for handling diplomats, consulars, and foreign nationals as set forth by the United States Department of State. The Norfolk Police Department is committed to assisting the Bureau of Immigration and Customs Enforcement (ICE), an investigative branch of the Department of Homeland Security, in its mission to effectively enforce immigration laws and to protect the United States from terrorism.

Supersedes:

1. G.O. OPR-460, May 8, 2009
2. Any previously issued directive conflicting with this order

Order Contents:

- I. Immunity from Arrest
- II. Immigration and Customs Enforcement (ICE)
- III. Consular Notification
- IV. Recordkeeping

I. Immunity from Arrest (CALEA 1.2.5, 61.1.3)

- A. Officers encountering foreign nationals suspected of committing felony or misdemeanor criminal offenses, to include Driving Under the Influence, shall:
1. Take reasonable measures to ensure public and officer safety.
 2. Conduct criminal investigations according to departmental procedures.
 3. Refer to the United States Department of State publication, *Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities*, for guidance on handling foreign nationals claiming immunity.
 4. If the individual is suspected of committing a felony and has diplomatic immunity, notify the Commanding Officer of the Detective Division, who shall call and remain in contact with the United States Department of State. The Commanding Officer of the Detective Division shall in turn notify the Chief of Police via the chain of command.
- B. Although diplomats may have immunity from prosecution, they are held accountable for traffic violations. Stopping a diplomat and issuing a traffic citation does not violate their immunity and is permissible. The following procedures shall be followed in the event of a traffic violation, even if immunity ultimately bars prosecution of a serious offense.
1. Upon being notified by an individual that he or she has diplomatic status, the officer shall contact The Office of Foreign Missions' (OFM) Diplomatic Motor Vehicle Office (DMVO) in Washington, D.C. for detailed driver, diplomatic immunity, and vehicle information. DMVO can be contacted by the officer or via the Police Operations Center (POC) Desk by calling the telephone number provided in Attachment B, Arresting a Non-U.S. Citizen: Consular Notification Process. Officers contacting the DMVO should be prepared to answer preliminary questions in reference to the diplomat, vehicle, location, offense, etc.
 - a. If the individual does not have diplomatic status, procedures outlined in G.O. ADM-420: Virginia Uniform Summons shall be followed when issuing a summons.
 - b. If the individual is found to have diplomatic status, the following procedures shall be adhered to when issuing a summons:
 - (1) The summons for the traffic violation shall be completed and presented to the diplomat for a signature. There is no requirement for the diplomat to sign the summons for release. If the diplomat refuses to sign the summons, the officer shall print "DIPLOMAT/REFUSE" in the space normally used for the violator's signature.
 - (2) Defendant's Copy, Page 3, shall be given to the diplomat and the other copies shall be forwarded as usual.

2. The officer shall ensure that the DMVO is notified of the outcome of the incident, e.g., summons number(s), charge(s), etc. This notification includes sending a facsimile of any related police reports and legal documents. Refer to *Diplomatic and Consular Immunity* for the appropriate fax information.

II. Immigration and Customs Enforcement (ICE)

A. Reasonable Suspicion

1. Virginia State Code authorizes law enforcement officers to enforce immigration laws of the United States pursuant to the provisions of this section. Accordingly, a Norfolk Police Officer may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from ICE that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and was deported or left the United States after conviction. (Refer to Attachment A, Reference 1, for code section.)
2. Police officers shall follow the below procedures when they have reasonable suspicion that an individual is an illegal foreign national. Officers are reminded that initial stops and detentions must be based on approved law enforcement procedures.
 - a. Officers shall contact ICE's Law Enforcement Support Center (LESC) in order to receive guidance on the handling of suspected illegal foreign nationals. LESC provides criminal and immigration status of aliens contained within their databases. Because of the sensitive nature of the information, only personnel authorized to request criminal records information over NLETS are authorized access. The procedures for conducting immigration alien queries (IAQ) are contained in the Virginia Criminal Information Network (VCIN) Manual.
 - b. The inquiring officer shall contact the Central Records Division, ID Section and request an IAQ. If the officer does not have access to a telephone, inquiry information shall be relayed through the Police Operations Center Central Desk. (Refer to Attachment A, Reference 2, for ID Section telephone number.)
 - c. Officers shall obtain the required information before making the inquiry. (Refer to Attachment A, Reference 3, for a chart listing the mandatory and optional fields for the IAQ.)
 - d. If the inquiry results in a negative response, the individual shall be released unless probable cause develops for additional charges, then the officer should take the appropriate police action.
 - e. If the inquiry results in a delayed or positive response, the identification clerk shall contact the Law Enforcement Support Center to further inquire the immigration status of the individual.

The officer shall then follow the instruction given by the LESC.
(Refer to Attachment A, Reference 4, for LESC telephone number.)

3. Upon receiving instruction from LESC, the officer shall take the individual forthwith before a magistrate or other issuing authority. Warrants, based on probable cause that the individual is in violation of Virginia State Code, shall expire within 72 hours, or be dismissed when the person is taken into federal custody, whichever occurs first. (Refer to Attachment A, Reference 5, for code section.)
4. Any additional requests for a warrant under this code shall not be permitted within a six-month period.

B. Arrest Procedures

Officers shall follow established arrest procedures when taking an illegal foreign national into police custody. In addition, officers shall notify ICE of the arrest.

III. Consular Notification (CALEA 1.1.4, 61.1.3)

The United States Department of State publishes the manual: *Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them*. It contains procedures for consular notifications for foreign nationals, documented and undocumented.

A. Whether the foreign national is in the United States legally or not, Consular notification shall be made in the following situations:

1. If the detained or arrested individual is from a country which requires mandatory notification.
2. If the detained or arrested individual is from a country which does not require notification; however, the individual requests notification.
3. Upon the death or serious personal injury (an injury which may result in death) of a foreign national.
4. If a ship or airplane registered in a foreign country wrecks or crashes in the United States.
5. Guardianship or trusteeship is being considered for a foreign national who is a minor or an incompetent adult.

Note: Consular notifications are not necessary when conducting brief detentions for the purpose of issuing traffic summonses or investigating traffic accidents.

- B. The State Department recommends that an officer, "... treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country." This includes prompt, courteous treatment and allowing consular access to the foreign national in order to provide appropriate consular services.
- C. Officers are responsible for making necessary notifications without delay and maintaining written notes of all actions and notifications. When making consular

notifications, officers shall not, under any circumstances, indicate that a foreign national is seeking asylum. The Department of State may be contacted to obtain guidance on such cases. Allowing the defendant to make a telephone call may not be sufficient notification.

- D. *Arresting a Non-U.S. Citizen - Consular Notification Process*, Attachment B, published by the United States Department of State, is a visual aid to assist law enforcement officers with determining and documenting consular notifications.
- E. Officers should make consular notifications by faxing PD 011, Fax Sheet for Notifying Consular Officers, Attachment C, to the appropriate consular's office.
 - 1. Consular offices and contact numbers may be accessed through the website: travel.state.gov by entering the name of the country under "Foreign Consular Offices."
 - 2. The Consular Notification and Access booklet includes a statement of rights, in various languages, that is to be administered to foreign nationals who have been arrested or detained.

IV. Recordkeeping

- A. Officers shall complete a PD 81A, Field Contact/Observation Report, Attachment D, when handling all illegal foreign nationals.
- B. All notifications and actions are to be noted in the "Other" Section, located on this form.
- C. Completed forms are to be submitted at the end of the officer's tour of duty and forwarded to the Detective Division.

Definitions:

Foreign National: is defined by the U.S. Department of State as any person who is not a U.S. citizen, regardless of immigration status, whether or not the individual is in the country legally.

Undocumented Foreign National: also known as an illegal alien, is a foreign national without a passport or alien registration document, known as a "green card."

Related Documents:

- 1. G.O. ADM-420: Virginia Uniform Summons
- 2. G.O. OPR-530: Federal Law Enforcement Agencies

Attachments:

- A. References
- B. *Arresting a Non-U.S. Citizen: Consular Notification Process*
- C. PD 011, Fax Sheet for Notifying Consular Officers
- D. PD 81A, Field Contact/Observation Report

References

Reference 1:

§19.2-81.6, Authority of law-enforcement officers to arrest illegal aliens, of the Virginia Code, 1950, as amended.

Reference 2:

Central Records Division, ID Section - 664-7024

Reference 3:

IAQ – Immigration Alien Query

Mandatory Fields	Optional Fields
Officer's name	Alien registration number
Contact telephone number	FBI number
First, middle, last name of subject	State ID number
Date of birth	Operator's license number
Sex	Height
Place of birth	Eye color
Custody status (yes or no)	Mother's first and maiden name
Offense	Father's first and last name
	Social Security Number
	Passport Number
	Any relevant information

Note: Officers are to obtain the required information before making the inquiry. The use of the optional fields increases the probability of finding a match within Immigration and Customs Enforcement (ICE) files.

Reference 4:

Law Enforcement Support Center (LESC) - (802) 872-6020

Reference 5:

§19.2-82, Procedure upon arrest without warrant, of the Virginia Code, 1950, as amended.

Reference 6:

Copies of the following documents are located on the City's computer network at R:\Reference\Diplomatic Immunity and Consular Notification.

- *Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities* booklet
- *Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them* booklet
- *Arresting a Non-U.S. Citizen - Consular Notification Process*

ARRESTING A NON-U.S. CITIZEN

Consular Notification Process



Q. Are you a U.S. citizen?

A. "YES, I am a U.S. citizen."

(No further action required.)



"NO, I am not a U.S. citizen."



IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.
- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).
- Consular officers may have access to detainee regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Poland ²	Tanzania
Algeria	Cyprus	Kiribati	Romania	Tonga
Antigua and Barbuda	Czech Republic	Kuwait	Russia	Trinidad and Tobago
Armenia	Dominica	Kyrgyzstan	St. Kitts and Nevis	Tunisia
Azerbaijan	Fiji	Malaysia	St. Lucia	Turkmenistan
Bahamas	Gambia	Malta	St. Vincent and the Grenadines	Tuvalu
Barbados	Georgia	Mauritius	Seychelles	Ukraine
Belarus	Ghana	Moldova	Sierra Leone	United Kingdom ³
Belize	Grenada	Mongolia	Singapore	Uzbekistan
Brunei	Guyana	Nigeria	Slovakia	Zambia
Bulgaria	Hungary	Philippines	Tajikistan	Zimbabwe
China ¹	Jamaica			

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).

2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders, notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. "YES."

Step 1. Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.



Consular Notification & Access (CNA)

U.S. Department of State

CA/P

SA-17, 12th Floor

Washington, DC 20522-1712

P: 202-485-7703

F: 202-485-6170

consnot@state.gov

Q. Do you want your consulate notified of your arrest/detention?

A. "YES."

Step 1. Make note in case file.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Step 1. Make note in case file.

Step 2. Do **NOT** inform the consulate.

(No further action required.)



For more information visit: <http://travel.state.gov/CNA>

PD 011

Norfolk Police Department
FAX SHEET FOR NOTIFYING CONSULAR OFFICERS



Fax Date: _____ **Fax Time:** _____ EST

To: Embassy/Consulate of _____ in _____, _____
(Country) (City) (State)

Fax#: _____ (See <http://www.travel.state.gov>)

Subject: NOTIFICATION OF:

- ☐ DEATH/SERIOUS PERSONAL INJURY OF A NATIONAL OF YOUR COUNTRY
☐ ARREST/DETENTION OF A NATIONAL OF YOUR COUNTRY

From:

Name: _____

Office: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone: _____ Fax #: _____

The following foreign national, whom we understand to be a national of your country

☐ Died on: _____

☐ Seriously injured on: _____

☐ Arrested/detained on: _____

☐ Mr. ☐ Mrs. ☐ Ms.: _____

Date of Birth: _____

Place of Birth: _____

Passport Number: _____

Date of Passport Issuance: _____

Place of Passport Issuance: _____

To arrange for consular access, please call _____ between the hours of _____
_____ EST and _____ EST and refer to case number _____ when you call.

Comments/Charges (optional):

Field Contact/Observation Report

Norfolk Police Department

POLICE REPORT
(FD-31A)
Rev. 07/13/88

LOCATION	Report Date	Report Time	Reason <input type="checkbox"/> Field Contact <input type="checkbox"/> Truant	Related Case #	Zone	Direction of Travel
	Contact Street #	Contact Street Name	Apt #	City, State, Zip	Subdivision/Neighborhood	
	If Juvenile, lives with <input type="checkbox"/> Mother <input type="checkbox"/> Self <input type="checkbox"/> Other <input type="checkbox"/> Father <input type="checkbox"/> Guardian		Full Name (lives with)		Address (lives with)	
	Last Name		First Name		Middle Name	Suffix
NAME	Race W/B/I/A/U <input type="checkbox"/>	Sex M/F/U <input type="checkbox"/>	DOB	If no DOB, exact age or age range (TO)		SSN
	Home Street #	Home Street Name	Apt #	City, State, Zip	Home Phone ()	
	Work Street #	Work Street Name	City, State, Zip		Work Phone ()	
	Employer Name (if juvenile, school)		Occupation		Resident? R/N <input type="checkbox"/>	Country of Citizenship
DESCRIPTION	Ethnic <input type="checkbox"/> (H) Hispanic (N) Non-Hispanic	Military Branch	(A) USA (MC) USMC (CG) USCG (N) USN (AF) USAF (NG) USNG	Military Status	(A) Active (RT) Retired (DP) Dependent (DC) Dischrgd (I) Inactive (RE) Reserves	
	Height	Weight	Hair Color	Eye Color	Skin Tone	
	Scars, Marks, Tattoos Type Location Body Part Description		Admitted Record? Y/N (List type of record on back)			

OFFICER NARRATIVE	Officer Last Name	First Name	Middle Initial	Suffix	Officer Code	
	License/Tag #	Tag State	Tag Year	License Type	Vehicle Year Make Model Color	
	Aliases/"Street" Name			Name of Gang		
	Persons with Suspect (Attach separate FC card for each person)					
	Physical Characteristics (ie. facial hair, glasses, etc.)				Status <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian	
	M.O. (ie. tools or weapon, suspect actions, etc.)					
	Property in Possession					
	Clothing worn at time of contact/observation					
	Crime Analysis (ie. suspected criminal activity, reason for stop, etc.)					
	Other (ie. name alert, OLN & OLS, type of record admitted, etc.)					